

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
REPLY BRIEF**



76-7133

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

B  
P/S

BARBARA NOBLE,

Plaintiff-Appellant,

-vs-

THE UNIVERSITY OF ROCHESTER AND  
STRONG MEMORIAL HOSPITAL,

Defendants-Appellees.

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REPLY BRIEF OF PLAINTIFF-APPELLANT

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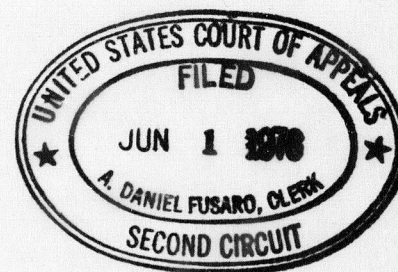


TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	1
ARGUMENT	
POINT I - PLAINTIFF HAS PROPERLY FILED HER CLAIMS PURSUANT TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AND THE COURT HAS JURISDICTION OF THOSE CLAIMS UNDER THE ACT.....	1
POINT II - PLAINTIFF DULY COMMENCED HER LAWSUIT UNDER THE EQUAL PAY ACT; ALL CLAIMS UNDER THE EQUAL PAY ACT SHOULD BE REINSTATED.....	11
CONCLUSION.....	13

# TABLE OF AUTHORITIES

<u>Case</u>	<u>Page</u>
Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974).....	7
Avins v. Mangum, 450 F.2d 932 (2nd Cir. 1971).....	3
Banks v. Lockheed-Georgia Co., 46 F.R.D. 442 (N.D. Ga. 1968).....	4
Burnett v. New York Central R.R. Co., 380 U.S. 424 (1965)....	8
Burns v. Thiokol Chemical Corp., 483 F.2d 300 (5th Cir. 1973).....	10
Cisson v. Lockheed-Georgia Co., 392 F.Supp. 1176 (N.D. Ga. 1975).....	5
Choate v. Caterpillar Tractor Co., 402 F.2d 357 (7th Cir. 1968).....	10
Conley v. Gibson, 355 U.S. 41 (1957).....	1
Culpepper v. Reynolds Metals Co., 296 F.Supp. 1232 (N.D. Ga. 1969) rev.'d 421 F.2d 888 (5th Cir. 1970)....	7,8
Dent v. St. Louis-San Francisco Railway Co., 406 F.2d 399 (5th Cir. 1969) cert. den. sub. nom. Hyler v. Reynolds Metals Co., 403 U.S. 912 (1971).....	10
Franks v. Bowan Transportation Co., ___ U.S. ___ (1976), 11 EPD ¶10,777.....	8
Hutchings v. United States Industries, Inc., 309 F.Supp. 691 (E.D. Texas 1969) rev.'d 428 F.2d 303 (5th Cir. 1970).....	8
Kohn v. Royall, Koegel & Wells, 50 F.R.D. 515 (S.D.N.Y. 1973), app. dismissed, 496 F.2d 1094 (2nd Cir. 1974).....	4
Loo v. Gerarge, 374 F.Supp. 1338 (D. Haw. 1974).....	6
Love v. Pullman, 430 F.2d 49 (10th Cir. 1970) rev.'d 404 U.S. 522 (1972).....	9
McDonnell Douglas Corp. v. Green 411 U.S. 792 (1973).....	10,11

<u>Cases</u>	<u>Page</u>
Miller v. International Paper Co., 408 F.2d 283 (5th Cir. 1969).....	10
Moody v. Albermarle Paper Co., ___ U.S. ___ (1975) 95 S. Ct. 2362, 9 EPD ¶10,230.....	8
Moore v. Sunbeam Corp., 459 F.2d 811 (7th Cir. 1972).....	6
Rich v. Martin-Marietta Corp., 522 F.2d 333 (10th Cir. 1975).....	11
Richard v. McDonnell Douglas Corp, 469 F.2d 1249 (8th Cir. 1972).....	9
Scheuer v. Rhodes, 416 U.S. 232 (1974).....	1
Sciaraffa v. Oxford Paper Co., 310 F.Supp. 891 (S.D. Mo. 1970).....	4
Stroud v. Delta Airlines, Inc., 392 F. Supp. 1184, (N.D. Ga. 1975).....	4
Tippett v. Liggett & Myers Tobacco Co., 316 F. Supp. 292 (M.D.N.C. 1970).....	4
Watson v. Limbach Co., 333 F.Supp. 754 (S.D. Ohio 1971)....	4
Wirtz v. Corning Glass Works 474 F.2d 490 (2nd Cir. 1973), aff'd sub. nom. Corning Glass Works v. Brennan, 414 U.S. 1110 (1974).....	12

ARGUMENT

POINT I

PLAINTIFF HAS PROPERLY FILED HER CLAIMS  
PURSUANT TO TITLE VII OF THE CIVIL RIGHTS  
ACT OF 1964 AND THE COURT HAS JURISDICTION  
OF THOSE CLAIMS UNDER THE ACT

Appellees' argument ignores the application of the rule of law on a motion to dismiss. All allegations of the complaint are construed as true. The complaint is given its most favorable reading. The complaint will not be dismissed unless there are no set of circumstances for a claim being stated. Conley v. Gibson, 355 U.S. 41 (1957); Scheuer v. Rhodes, 416 U.S. 232 (1974).

By ignoring plaintiff's well pleaded allegations of continuing discrimination, from the inception of her employment with the defendants and continuing to date and affecting herself and other women employees, the appellees transform charges of class-wide, pervasive discrimination into an "isolated" instance of "denial of promotion." Plaintiff makes her charges of continuing discrimination in great detail. For example, she alleges that women are excluded from certain job classifications, including, without intending to limit, the classification of chief perfusionist. (A. 6) She alleges that she and other women similarly situated are denied equal pay for equal work, that the appellees recruit men for the best-paying career oriented jobs and relegate women to lower paying jobs with no career or advancement prospects, that appellees

provide training to men employees and deny training to women employees, that appellees promote and advance men employees while denying these opportunities to women employees and that the appellees foster an atmosphere in the employment situation which is calculated to harass, embarrass, humiliate and cause the woman employee to "keep her place." (A. 5-7, 42-44)

Plaintiff alleges that she "...has sought and continues to seek advancement at Strong Memorial Hospital." (A. 4) Plaintiff has "...on enumerable occasions over the course of her employment with defendants...asked Dr. Mahoney as agent and/or employee of defendants, whether she could visit other institutions which had similar equipment to that at Strong Memorial Hospital" for the purpose of receiving additional training like that offered to a male employee. (A. 9)

Defendants denied plaintiff these opportunities. After defendants sought out an unqualified man, provided special instruction for that man and placed that man on the hospital "pump team", plaintiff supervised and instructed the man-they performed the same or similar work notwithstanding that the man has been given the pay, title, status and benefits of the position of "Chief Perfusionist".

"After Aaron Hill came to the 'pump team' plaintiff instructed him in the procedures, service and equipment of the 'pump team,' continued the education and training responsibility for new trainees and continued her same duties as before. In effect, plaintiff carried out the

same duties which Aaron Hill had but without pay, title, status and benefits of Chief Perfusionist." (A. 10)

Not only do defendants continue to discriminate against plaintiff Noble by continuing to deny her the advancement, training, pay, title and status and benefits to which she is entitled, but defendants were continuing to bestow even greater benefits on the man who performed the same work as plaintiff with less qualifications than the plaintiff at the time plaintiff filed her complaint herein.<sup>1</sup>

"Upon information and belief Arron Hill is being considered for faculty appointment; he receives a salary of approximately \$14,000.00-14,560.00 per annum. He is less qualified for, and has less experience at, the position which plaintiff holds and performs without such title, salary, benefits and status.

Plaintiff, at the time December, 1973, already had about four years experience with the above-mentioned machinery, was a certified cardiac perfusionist and had been so certified since June 1973 when she qualified to take the examination to be a certified perfusionist, had run the service alone for a period from March, 1973 to December, 1973, had begun to train two other nurses, and had written an article which was later published in the American Journal of Nursing in May, 1974. Plaintiff is presently classified as a Nurse Perfusionist and paid a salary of approximately \$13,000.00 per annum." (A. 10)

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<sup>1</sup> In view of the detail included in plaintiff's 16 page complaint, there is no basis for appellees' argument that the complaint is deficient because the allegations are "conclusory". In any event, even where this court has found allegations of a complaint to lack necessary detail, the court has not dismissed the claim but has allowed the filing of an amended complaint. Avins v. Mangum, 450 F.2d 932 (2nd Cir. 1971).

Plaintiff's allegations of discrimination fall well within the holdings of numerous courts in like circumstances that the discrimination is continuing. In addition to the authority previously cited at pages 9-11 of plaintiff's brief, see Kohn v. Royall, Koegel & Wells, 50 F.R.D. 515 (S.D.N.Y. 1973), app. dismissed, 496 F.2d 1094 (2nd Cir. 1974); Watson v. Limbach Co., 333 F.Supp. 754 (S.D. Ohio 1971); Sciaraffa v. Oxford Paper Co., 310 F.Supp. 891 (S.D. Mo. 1970); Tippett v. Liggett & Myers Tobacco Co., 316 F.Supp. 292 (M.D.N.C. 1970); Banks v. Lockheed-Georgia Co., 46 F.R.D. 442 (N.D.Ga. 1968).

Defendants continue all acts of discrimination notwithstanding that plaintiff complained-notwithstanding that plaintiff continues to seek the pay, title, status and benefits to which she is entitled. (A. 12, 13) In fact, at the time of the filing of the federal complaint, defendants were considering giving the man additional pay, title, status and benefits while denying those to the plaintiff. (A. 10)

Even if we apply the reasoning of the courts on which defendants rely to urge that there is no continuing discrimination, the court would reach the conclusion that this complaint states a claim of class-wide, pervasive, continuing employment discrimination. In Stroud v. Delta Airlines, Inc., 392 F.Supp. 1184, 1189 (N.D. Ga. 1975), the court noted that

"On the other hand, where there is ample evidence available that past discriminatory policies have been perpetuated and affect employment decisions within 180 days of the filing of an EEOC complaint, the discrimination may be deemed continuing, insofar as filing a timely EEOC complaint is concerned.

The concept of continuing discrimination is particularly applicable in cases involving discriminatory failure to hire or rehire; for in such circumstances, 'it would seem to be a needless, futile gesture to require [the] plaintiff to make a formal reapplication for the desired position, simply because the EEOC complaint was not filed within 180 or 210 (90 under prior law ) days of the initial application.' Cisson v. Lockheed-Georgia Co., supra ... In order for past acts to give rise to present claims, they must be continuing in the sense that they have a present impact on defendant's employment practices."

There is no question that defendants' past acts have a present impact on defendants' employment practices in this case. Plaintiff is paid less for doing the same or similar work as the man; she is still denied training, title and status; defendants are in the process of giving the man more pay, title and status while denying that to the plaintiff.

In contrast to the particular and detailed pleading by the plaintiff herein of the specific acts of employment discrimination which were continuing as of the day of filing of the federal complaint, the plaintiff in Cisson v. Lockheed-Georgia Co., 392 F.Supp. 1176 (N.D. Ga. 1975), merely used the terminology "continuing" to describe a demotion that had occurred more than 300 days prior to the filing of her complaint with the Equal Employment Opportunity Commission. The court noted however, that

"Similarly, a hiring, transfer or arguably a layoff decision, albeit isolated incidents when considered alone, may present claims of continuing discrimination if they constitute

'single episodes in an alleged conspiracy to deny plaintiffs...jobs because of their race...' Macklin v. Spector Freight Systems, Inc., supra at 987. In fact, where it is obvious that a Title VII plaintiff is complaining of discriminatory hiring, promotion or transfer practices, it would seem to be a needless, futile gesture to require that plaintiff to make a formal reapplication for the desired position, simply because the EEOC complaint was not filed within 180 or 210 (or 90 under prior law) days of the initial application."

Any fair reading of plaintiff's complaint herein establishes that she is complaining of discriminatory hiring, promotion and transfer practices, among other continuing acts of employment discrimination. The complaint of these continuing acts has been timely filed.

Similarly, the reasoning of the courts in Moore v. Sunbeam Corp., 459 F.2d 811 (7th Cir. 1972) and Loo v. Gerarge, 374 F.Supp. 1338 (D. Haw. 1974) establishes that this is a complaint of continuing employment discrimination. The court in Moore noted that a single failure to promote may be continuing discrimination if it is followed by repeated promotions. The case at hand involves not only bestowing more titles, status and benefits on a man who performs the same job as the plaintiff along with continuing to pay the man more than the woman and continuing to deny the woman the same opportunities for training but also involves the defendants bestowing additional pay, title, status and benefits on the man by considering a faculty appointment just prior to the filing of this complaint. Where none of the series of discriminatory acts alleged in the Loo case occurred within

300 days of filing the complaint with the Equal Employment Opportunity Commission, the denial of equal pay for equal work, training, title and status to the plaintiff herein were all occurring when the complaint was filed with the Equal Employment Opportunity Commission. At the time of the filing of the subsequent federal complaint, the defendants were in the process of considering the man for a faculty appointment with additional status and salary while denying the same to the plaintiff.

The development of the law on continuing employment discrimination follows the Congressional plan that Title VII, as remedial legislation, be liberally construed so as to effect the purpose of immediately eliminating all vestiges of employment discrimination. The Supreme Court, in ruling that a person is entitled to a full trial in federal court on an employment discrimination claim notwithstanding that there have been arbitration proceedings involving that claim, has underscored that the Congress has placed eliminating employment discrimination under Title VII as one of the nation's highest priorities. Alexander v. Gardner-Denver Co., 415 U.S. 36, 47-51 (1974). Provisions on filing of charges pursuant to Title VII are to be construed broadly so as to preserve claims and allow parties to proceed in a case on the merits to determine whether discrimination in employment has in fact occurred. Thus, in Culpepper v. Reynolds Metal Co., 296 F. Supp. 1232 (N.D. Ga. 1969), rev.'d 421 F.2d 888 (5th Cir. 1970), and

Hutchings v. United States Industries, Inc., 309 F.Supp. 691 (E.D. Texas 1969), rev.'d 428 F.2d 303 (5th Cir. 1970), the Fifth Circuit Court of Appeals held that time for filing claims with the Equal Employment Opportunity Commission is tolled when an employee first invokes contract grievance procedures in connection with the claims of discrimination. The court in Culpepper, quoted approvingly the Supreme Court's decision in Burnett v. New York Central R.R. Co., 380 U.S. 424 (1965) where the court ruled a claim filed under the Federal Employer's Liability Act to be timely noting that

"The basic question to be answered in determining whether, under a given set of facts, a statute of limitations is to be tolled, is one of 'legislative intent whether the right shall be enforceable\*\*\*after the prescribed time.' [citation omitted]....As this Court has expressly held, the FELA limitation period is not totally inflexible, but, under appropriate circumstances, it may be extended beyond three years. Burnett v. New York Central R.R. Co., 380 U.S. at 426,427."

The broad, liberal reading of Title VII has been recently underscored by the Supreme Court in Moody v. Albemarle Paper Co., \_\_\_ U.S. \_\_\_ (1975), 95 S.Ct. 2362, 9 EPD ¶10,230 and Franks v. Bowman Transportation Co., \_\_\_ U.S. \_\_\_ (1976), 11 EPD ¶10,777.

Contrary to what appellees suggest in their brief at pages 5-7, the filing of plaintiff's claims with the Equal Employment Opportunity Commission was complete on March 3, 1975 when a charge was filed with the New York State Division of

Human Rights and mailed to the Commission.<sup>1</sup> By agreement between the Equal Employment Opportunity Commission and the New York State Division of Human Rights a filing of a complaint with the Division constitutes a filing of that same complaint with the Commission and vice versa. (A copy of this agreement is attached hereto and made a part hereof as Appendix B.) Even though a complaint filed with the Commission has been described as being in "suspended animation"-Love v. Pullman, 430 F.2d 49 (10th Cir. 1970) rev.'d 404 U.S. 522 (1972)- during the 60 day "deferral" to a state agency, the Commission nevertheless has jurisdiction during this period. For example, either the Commission or the party may seek an injunction from a federal court during the "deferral" period. See 29 C.F.R. 1601.12 (d). Certainly, any filing with the Commission or with any agent of the Commission tolls the time for filing the charge with the Commission pursuant to Title VII. Richard v. McDonnell Douglas Corp., 469 F.2d 1249 (8th Cir. 1972).

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<sup>1</sup> Not only did the New York State Division of Human Rights specifically overrule all of defendants' claims that plaintiff's claims are not timely (A. 58, 59) and rule that the claims are claims of continuing employment discrimination, but the Monroe County Supreme Court, the Honorable David O. Boehm, ruled that plaintiff's claims are of continuing employment discrimination. A copy of Judge Boehm's order and decision is attached hereto as Appendix A. Defendants have appealed Judge Boehm's decision to the Supreme Court, Appellate Division Fourth Department. The parties are awaiting decision.

Thus, contrary to what defendants suggest in their brief at page 3, the issuance of the Right To Sue Notice by the Equal Employment Opportunity Commission was pursuant to Title VII, 42 U.S.C. 2000e-5(f)(1)-180 days after plaintiff filed her claims. Even if such issuance of the Right To Sue Notice was "premature", that would not serve as a basis to dismiss plaintiff's complaint. Errors committed by the Commission or the Commission's overlooking of time limits may not be used to defeat a private party's litigation. Burns v. Thiokol Chemical Corp., 483 F.2d 300, (5th Cir. 1973); Sanchez v. Standard Brands, 431 F.2d 455, 465 (5th Cir. 1970); Dent v. St. Louis-San Francisco Railway Company, 406 F.2d 399 (5th Cir. 1969), cert denied sub nom. Hyler v. Reynolds Metals Co., 403 U.S. 912 (1971); Miller v. International Paper Co., 408 F.2d 283 (5th Cir. 1969); Choate v. Caterpillar Tractor Company, 402 F.2d 357 (7th Cir. 1968).

Finally, plaintiff's pleading that defendants' acts of discrimination affect her and other women similarly situated is precise and accurate pleading of the discrimination in issue. Plaintiff is entitled to broad relief on pleading her claims, including injunctive relief forbidding the continuation of any of the illegal employment practices. 42 U.S.C. §2000e-5(g). Notwithstanding that plaintiff's claim is described as an "individual" rather than a "class action" claim, plaintiff is still entitled to show and allege the patterns, practices, customs and usages of employment discrimination. McDonnell Douglas Corp. v. Green, 411 U.S.

792 (1973); Rich v. Martin-Marietta Corp., 522 F.2d 333 (10th Cir. 1975).

POINT II

PLAINTIFF DULY COMMENCED HER LAWSUIT  
UNDER THE EQUAL PAY ACT; ALL CLAIMS  
UNDER THE EQUAL PAY ACT SHOULD BE  
REINSTATED

The court below dismissed without reason or comment plaintiff's denial of equal pay for equal work under the Equal Pay Act. Notwithstanding that the defendants below did not seek dismissal of the equal pay claim but only to strike certain of the allegations, defendants attempt to justify dismissal of the equal pay claim under the Equal Pay Act by suggesting that plaintiff has not sufficiently alleged that the defendants "...pays wages to employees of the opposite sex in such establishment for work equal on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions..." 29 U.S.C. 206 (d)(1)..

Plaintiff alleges that

"Defendants discriminate against plaintiff and other persons similarly situated by maintaining a policy, practice, custom and usage of paying women employees less than their male counterparts when the education, skill and professional competence of the women employees equals or exceeds the education, skill and competence of the male employees engaged in the same or similar work." (A. 6)

Plaintiff alleges that she and the man in question, Aaron Hill, work at the same facility, Strong Memorial Hospital operating room. They do the same work-both are members of the "pump team". Plaintiff has been in charge of the pump team and was still in charge of the pump team at the time of the filing of the complaint notwithstanding that the defendants in the meantime had given Mr. Hill the pay, title, status and benefits of "Chief Perfusionist." Plaintiff supervised Aaron Hill after he joined the pump team.

(A.10)


"After Aaron Hill came to the "pump team" plaintiff instructed him in the procedures, service and equipment of the "pump team;" continued the education and training responsibility for new trainees, and continued her same duties as before. In effect, plaintiff carried out the same duties which Aaron Hill had but without pay, title, status and benefits of Chief Perfusionist." (A.10)

Every element of a claim of denial of equal pay for equal work under the Equal Pay Act has been sufficiently pleaded. It is no ultimate defense even on a trial of an equal pay claim for a defendant, like the defendants here, to argue that plaintiff's job has a different classification or label than the job of the man in question-Nurse Perfusionist compared to Chief Perfusionist. The question is whether the woman in question is doing the same or similar job as the man but receiving less pay for the equal work. Wirtz v. Corning Glass Works, 474 F.2d 490 (2nd Cir. 1973), aff'd sub. nom. Corning Glass Works v. Brennan, 414 U.S. 1110 (1974). There is nothing in the record that in any way takes issue with plaintiff's assertions that she is at least doing in her job as much as Aaron Hill in his job in the areas of

equal skill, equal effort and equal responsibility. In fact, plaintiff alleges that she has more responsibility than Aaron Hill, is more skilled than Aaron Hill and puts forth more effort than Aaron Hill, but receives less pay than Aaron Hill.

CONSLUSION

For these reasons and the reasons previously set forth in Brief of Plaintiff-Appellant, April 21, 1976, plaintiff requests that the court reverse the decision of the lower court finding that plaintiff's complaint states claims against all defendants pursuant to Title VII of the Civil Rights Act of 1964 and the Equal Pay Act. The court should remand this case with the directions that discovery as noticed by the plaintiff proceed immediately without further delay.



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May 30, 1976

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply Brief of Plaintiff-Appellant was served on the defendants-appellees by my causing two copies thereof to be mailed to attorneys for the defendants-appellees, Nixon, Hargrave, Devans & Doyle, John B. McCrory, Esq., of Counsel, Lincoln First Tower, Rochester, New York 14603 this 30th day of May, 1976.

A large, stylized handwritten signature in cursive script, appearing to read "Emmelyn Logan-Baldwin".

Emmelyn Logan-Baldwin  
Attorney for Plaintiff-Appellant  
510 Powers Building  
Rochester, New York 14614

May 30, 1976

APPENDIX A

76 JAN 21 PM 12:00

MONROE COUNTY  
CLERKS OFFICE

At a Special Term of the Supreme  
Court of the State of New York  
held in and for the County of  
Monroe at the Hall of Justice,  
Rochester, New York on January 13,  
1976

PRESENT: THE HONORABLE DAVID O. BOEHM  
Justice

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF MONROE

STATE DIVISION OF HUMAN RIGHTS on the  
Complaint of BARBARA NOBLE,

Complainant,

-vs-

UNIVERSITY OF ROCHESTER and  
STRONG MEMORIAL HOSPITAL,

Respondents.

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ORDER

*Index # 13420/75*

Motion having been made by the complainant in the above  
noted proceeding brought on by notice of motion dated  
November 7, 1975 for an order enforcing subpoenas duces tecum  
dated April 10, 1975, and said motion having duly come on  
for hearing before the court at Special Term on January 13,  
1976, The Honorable David O. Boehm, Justice Presiding, after  
previous adjournments of said motion, and the complainant  
appearing by and through her attorney, Emmelyn Logan-Baldwin,  
in support of said motion and the respondents appearing by

and through their attorneys, Nixon, Hargrave, Devans & Doyle, John B. McCrory, Esq., of Counsel, in opposition to said motion and the court having read and considered the Notice of Motion to Enforce Subpoenas Duces Tecum with attached affidavits and exhibits dated November 7, 1975, complainant's attorney's Supplemental Affirmation in Support of Motion to Enforce Subpoenas Duces Tecum dated December 29, 1975, the briefs submitted on behalf of complainant and the brief submitted on behalf of the respondents and the court having heard oral argument by counsel for both parties, and, after due deliberation, the court having found as follows:

The New York State Division of Human Rights may issue subpoenas and subpoenas duces tecum. The Division is given express statutory authority to issue the same. (Executive Law Section 295.7). The Division has implemented its statutory authority to issue subpoenas and subpoenas duces tecum by regulation, 9A NYCRR 465.10(a). State Commission for Human Rights v. United Association of Journeymen & Apprentices of the Plumbers and Pipefitting Industry of the United States and Canada, Local No. 13, 56 Misc. 2d 98 (S. Ct. Mon. Co. 1968).

An attorney appearing on behalf of a complaining party before the Division has the right, pursuant to the Division rules, to issue subpoenas and subpoenas duces tecum. An attorney is expressly authorized to do so by the rules.

Section 2302(a) of the CPLR, to which reference is made in the Division rules as to an attorney's right to issue subpoenas and subpoenas duces tecum, authorizes an attorney to issue subpoenas or subpoenas duces tecum, "Subpoenas may be issued without a court order by ...an attorney of record for a party to...an administrative proceeding...in relation to which proof may be taken or the attendance of a person as a witness may be required."

This is an administrative proceeding in relation to which proof may be taken or where the attendance of a person as a witness may be required. An attorney has authority to issue subpoenas and subpoenas duces tecum in relation to a preliminary investigatory conference before the Division and/or in relation to a confrontation conference.

Complainant's motion to enforce subpoenas duces tecum is granted. The motion is granted not only on the authority of CPLR §2302(a), Executive Law 295.7 and Division regulations, 9A NYCRR 465.10(a) but also on the basis of the finding by the New York State Division of Human Rights dated August 15, 1975 that the complaint herein is not barred by the statute of limitations and that the class aspects of the complaint are proper.

Complainant's motion to enforce subpoenas duces tecum herein is granted on the further, specific finding of the court that the complaint is not time barred. The court bases

this separate finding on the authority cited by the New York State Division of Human Rights in its finding of jurisdiction dated August 15, 1975 above noted, and on the authority cited in complainant's briefs to the court. Although a single act of discrimination is recited, among other acts of discrimination in the complaint; the complaint is not time barred with respect to a single act of discrimination if it occurred more than one year before the filing of the complaint if it is alleged that the single act was a part of a series of discriminatory acts.

IT IS THEREFORE ORDERED that complainant's motion to enforce subpoenas duces tecum herein dated April 10, 1975 is granted, and it is

FURTHER ORDERED that production of the documents required pursuant to the subpoenas duces tecum herein shall be stayed 60 days provided respondents perfect their appeal from this order by filing their notice of appeal, record on appeal and brief on appeal with the Appellate Division New York State Supreme Court, Fourth Department within 60 days of the service of this order with notice of entry on attorneys for respondents.

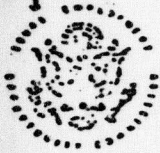
*s/ David O. Boehm*  
\_\_\_\_\_  
David O. Boehm, Justice of the  
Supreme Court

January 16 1976  
Rochester, New York

ENTER

APPENDIX B

NEW YORK STATE  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
WASHINGTON, D.C. 20505



MEMORANDUM OF UNDERSTANDING

In order to provide for efficient cooperation and coordination of enforcement activities under Title VII of the Civil Rights Act of 1964 (the "Act") and the Human Rights Law of The State of New York the Equal Employment Opportunity Commission (the "Commission") and The New York State Division of Human Rights (the "Agency") hereby express adherence to the following procedure for the processing and investigation of charges of discrimination in employment:

1. When an employment discrimination charge is filed with the Agency, the Agency will furnish the charging party with literature prepared by the Commission describing his federal rights and advise him, at some time before the expiration of the 60- or 120-day period of deference provided by section 706(b) of the Act of his right to file a complaint with the Commission. If the charging party at the time of filing a charge with the Agency, or at any other time, indicates to the Agency that he wishes to file with the Commission, the Agency will notify the Commission (on a form to be supplied by the Commission). Pursuant to Section 705(f), the Commission by this agreement designates the Agency as a State Office of the Commission for the sole purpose of receiving such charges on behalf of the Commission, and the Agency agrees to receive such charges. The Commission will consider the charge to be filed with the Commission at the expiration of the period of deference. Where the charging party has indicated that he wishes to file with the Commission and the case is terminated by the Agency, the Commission will be notified by the Agency of the nature and basis of the disposition (on a form to be supplied by the Commission). The Commission will consider the charge to be filed with the Commission at the time of such state agency termination. Pursuant to Section 705(f), the Commission by this agreement designates the Agency as a State office of the Commission for the sole purpose of receiving such charges on behalf of the Commission, and the Agency agrees to receive such charges. The Commission will consider the charge to be filed with the Commission when the state agency terminates its proceedings.
2. When the Commission receives a charge which must be deferred to the Agency under section 706(b) of the Act, the Commission will send by registered mail a copy of the charge, or the

Approved by Commission  
6/7/71 Page 1

original, where requested, to the Agency, together with all other available information on the case. The Agency hereby designates the Commission to serve as its agent for the purpose of the receipt of charges and agrees that the period of deference provided by section 706(b) commences to run when the charge is sent. The Commission will notify the charging party of the deferral and the date thereof and will advise him that he should cooperate with the Agency in its handling of his case and that the Commission will consider the charge to be filed with the Commission at the expiration of the period of deference unless it is notified by the charging party that the charge has been settled to his satisfaction. The Agency will periodically inform the Commission (on a form to be supplied by the Commission) of all actions taken on charges deferred to the Agency. If the Agency terminates its proceedings prior to the expiration of the period of deference the procedure outlined in paragraph 1 will apply.

3. Upon the expiration of the period of deference the Commission will consider the charge to be filed with the Commission. The Commission will develop and forward to the Agency standards of investigation, finding, and remedy in certain classes of cases. In those classes of cases the Commission may temporarily refrain from actually processing the charge, and will so notify the Agency, if it appears that the Agency will meet those standards in the processing of that case. In addition, if the Agency consistently meets those standards of case processing the Commission may adopt the investigative findings of the Agency when they result in a formal written finding that cause exists to believe that an unlawful employment practice exists; and may approve Agency Conciliation Agreements or Cease and Desist Orders when they are accepted by the charging party and when they effectuate the basis remedial purposes of the Commission. The Commission will assure, however, that, where the charging party wishes to assert his federal rights or where the interest of effective enforcement of Title VII requires it the charge will be processed promptly. Provided, however, that such procedures in no way shall detract from the responsibility of the Agency under State law.
4. In the course of its investigation of a charge the Commission shall have access to relevant information in the possession of the Agency, including its investigative files with respect to the same or related cases, and for this purpose representatives of the Commission will be permitted to copy or obtain copies of pertinent documents, and to utilize the same in proceedings under Title VII, provided that information on conciliation attempts will not be made public. The Commission shall in like circumstances grant to representatives of the Agency similar access to relevant information in its possession. The

Agency may utilize such information but may not make it public except as part of enforcement proceedings under its statute. To the extent permitted by law and by applicable policies and regulations similar access will be granted also to information in the possession of other federal agencies. However, the Commission and the Agency agree that information on conciliation attempts will not be made public where such disclosure would be contrary to the statutory provisions or policies applicable to conciliation proceedings. Provided, however, the sharing of information on conciliation by the Agency and the Commission with each other shall not be deemed to be making such information public.

5. Where the same or related charges are pending before the Agency and the Commission, the Commission and the Agency will endeavor through consultation and mutual assistance to provide for efficient processing of the charges. The Commission may permit personnel of the Agency to accompany Commission personnel on investigations and conciliation of cases falling within their joint jurisdiction. Provided, however, that such procedures in no way shall detract from the responsibility of the Commission under Federal law. The Agency will permit personnel of the Commission to accompany and observe Agency personnel on investigations and conciliation of cases falling within their joint jurisdiction. Provided, however, that such procedures in no way shall detract from the responsibility of the Agency under State law.
6. In accordance with section 709(b) the Commission may with the concurrence of the Agency designate the Agency or its employees to act for it in the course of investigation or conciliation and may reimburse the Agency or its employees for such services.
7. Settlement of a case whether or not the case was deferred by the Commission or filed with the Agency on terms satisfactory to the Agency shall not be deemed by the Commission dispositive of the charging party's rights under Federal law inless the Commission is made a party to the agreement or the charging party has accepted the terms as equitable and executed a written voluntary waiver (form to be supplied by the Commission) evidencing such acceptance.
8. Upon request from the Commission the Agency will provide the appropriate Field Office of the Commission with a copy of all charges or complaints filed with it under State law in addition to notifying the charging parties of their Federal rights as provided in paragraph 1 above.

9. If a charge is filed by a member of the Commission alleging an unlawful practice occurring within the jurisdiction of the Agency, the Commission will notify the Agency. If the Agency requests time to process the charge the procedures outlined above will be followed.
10. The Commission and the Agency each shall have the power to cancel this Memorandum of Understanding at any time by mailing written notice to the other's principal office. Upon such cancellation, neither the Commission nor this Agency shall have any further obligation under, or on account of, this Memorandum of Understanding. Except that, subject to appropriate audit, the Commission shall make any payments due under existing contracts for work actually performed prior to such cancellation.

William M. Loebe  
Title: Commissioner  
Agency: New York State Division  
of Human Rights

William B. Bunn  
Chairman  
Equal Employment Opportunity Commission

June 20, 1972  
Date

X July 6, 1972  
Date